

MISSOURI COURT OF APPEALS WESTERN DISTRICT

DANIAL M. RINEHART,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD78708

Date: November 1, 2016

Appeal from:
Cass County Circuit Court
The Honorable William B. Collins, Judge

Appellate Judges:
Division One: Anthony Rex Gabbert, P.J., Thomas H. Newton and Alok Ahuja, JJ.

Attorneys:
Jeannette L. Wolpink, Kansas City for appellant
Daniel N. McPherson, Jefferson City for respondent

MISSOURI APPELLATE COURT OPINION
SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT

DANIAL M. RINEHART

Appellant,

v.

STATE OF MISSOURI,

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Cass County

Daniel Rinehart was convicted after trial of multiple felonies arising out of his long-standing sexual relationship with one of his daughters, which produced four children, three of whom died without receiving medical care. Rinehart's convictions were affirmed by this Court on direct appeal. Our mandate issued on December 5, 2012.

Rinehart filed a *pro se* motion for post-conviction relief under Supreme Court Rule 29.15 on March 7, 2013. Counsel was appointed and an amended motion was filed on June 17, 2015. After an evidentiary hearing, the circuit court denied the motion on the merits on April 30, 2015. Rinehart appeals.

VACATED, AND CASE REMANDED WITH DIRECTIONS TO DISMISS RINEHART'S POST-CONVICTION MOTION.

Division One holds:

Given the issuance of our mandate on December 5, 2012, Rinehart's initial *pro se* Rule 29.15 motion was due no later than Tuesday, March 5, 2013. Rule 29.15(b). The file stamp on Rinehart's original motion is dated March 7, 2013, however.

Although the State did not argue in the circuit court that Rinehart's motion was untimely, the Missouri Supreme Court has held that "[i]t is the court's duty to enforce the mandatory time limits and the resulting complete waiver in the post-conviction rules – even if the State does not raise the issue." *Dorris v. State*, 360 S.W.3d 260, 268 (Mo. banc 2012).

Rinehart acknowledges that his post-conviction relief motion may be untimely based on the file stamp. He argues on appeal, however, that various circumstances created a genuine factual issue as to whether the motion was timely, or whether he falls within one of the exceptions to the timeliness requirements recognized by the Supreme Court in *Dorris*. He accordingly argues that the case should be remanded to the circuit court to address the timeliness issue.

None of the circumstances to which Rinehart points establish a colorable basis to find that Rinehart's motion was timely, or that the untimeliness of the motion should be excused. A remand is therefore unnecessary. Because Rinehart's *pro se* motion was untimely, the circuit court lacked authority to review the merits of his post-conviction relief claims and should have dismissed the motion as untimely.

Before: Division One: Anthony Rex Gabbert, P.J., Thomas H. Newton and Alok Ahuja, JJ.

Opinion by: Alok Ahuja, Judge

November 1, 2016

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.
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